

## ARTICLE 60.

## MANDAMUS.

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|--|---------------------------------------|
| 1. Application for.  | 5. Pleading.                          |
| 2. Rule to show cause why it should not issue.   | 6. To stand for trial, when.          |
| 3. Answer.   | 7. Trial by jury or court; judgment.  |
| 4. Defendant not permitted to rely on any matter in second application which might have been pleaded to the first. | 8. Costs.                             |
|  | 9. <i>Ex parte</i> hearing.           |
|  | 10. Dismissal of petition with costs. |
|  | 11. Must be peremptory.               |
|  | 12. Appeal bond.                      |

An. Code, 1924, sec. 1. 1912, sec. 1. 1904, sec. 1. 1888, sec. 1. 1806, ch. 90, sec. 9. 1858, ch. 285, sec. 1.

1. All applications for granting writs of mandamus shall be made to the circuit courts for the several counties and the superior court of Baltimore City, the court of common pleas or the Baltimore City court, or to the judges of said courts, respectively, during the recess of the court, and shall be commenced by petition verified by the affidavit of the applicant and setting forth fully the ground of his application.

**When mandamus will issue.**

Mandamus will not issue to compel mayor and city council to levy a special assessment to pay a judgment. Mandamus is not a writ of right, but is within discretion of court, which, however, must not be arbitrary; the writ will never be granted where it is unnecessary or would work injustice or be nugatory or introduce confusion into municipal administration. *Kunlein v. Baltimore*, 118 Md. 580.

Mandamus is appropriate in all cases where the law has established no specific remedy, and where in justice there ought to be one. *Harwood v. Marshall*, 9 Md. 97; *Legg v. Annapolis*, 42 Md. 226.

Mandamus will not issue unless petitioner shows a clear legal right in himself, and a corresponding imperative duty on part of defendant. *Frederick County v. Fout*, 110 Md. 174; *Upshur v. Baltimore*, 94 Md. 746.

A ministerial duty may be enforced by mandamus. *Sudler v. Lankford*, 82 Md. 148; *contra*, if the duty is discretionary. *Devin v. Belt*, 70 Md. 354.

Writ is never issued when it would be nugatory. The application for mandamus abates upon death of applicant. *Booze v. Humbird*, 27 Md. 4.

Mandamus will not lie when there is an adequate remedy at law. *Brown v. Bragunier*, 79 Md. 242.

Fact that petitioner for mandamus has a remedy in equity does not defeat mandamus unless former remedy has already been invoked. *Baltimore University v. Colton*, 98 Md. 636; *Hardcastle v. Maryland & Delaware R. R. Co.*, 32 Md. 35.

**Generally.**

While mandamus is not a writ *ex debito justitiæ* but rests in sound discretion of court, latter must not be arbitrary, but must be exercised under established rules of law. *Brooke v. Widdicombe*, 39 Md. 404; *Weber v. Zimmerman*, 23 Md. 53; *Hardcastle v. Maryland & Delaware R. R. Co.*, 32 Md. 35.

This article referred to in overruling contention that mandamus was improperly directed to be issued after demurrer to answer and without proof to support petition; demurrer to answer in mandamus case is proper. Where there is no answer whatever or an insufficient answer, the proceedings are not conducted as prescribed by this article so as to properly present questions. *Price v. Ashburn*, 122 Md. 521.

The essential nature of mandamus and its force and effect were not changed by act of 1858, ch. 285; purpose of that act. When writ of mandamus issues, it cannot

While a few general principles relative to mandamus are stated in the notes to sec. 1, no attempt is made to collect the cases dealing with that subject but containing no reference to the statutes—see Md. Digest.